



Senate

General Assembly

File No. 541

February Session, 2014

Substitute Senate Bill No. 411

Senate, April 15, 2014

The Committee on Judiciary reported through SEN. COLEMAN of the 2nd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

***AN ACT CONCERNING REVISIONS TO THE CONNECTICUT
BUSINESS CORPORATION ACT.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 33-706 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2014*):

3 (a) A shareholder may vote his shares in person or by proxy.

4 (b) A shareholder or his agent or attorney-in-fact may appoint a
5 proxy to vote or otherwise act for the shareholder by signing an
6 appointment form or by an electronic transmission of the appointment.
7 An electronic transmission must contain or be accompanied by
8 information from which one can determine that a shareholder or his
9 agent or attorney-in-fact authorized the electronic transmission.

10 (c) An appointment of a proxy is effective when a signed
11 appointment form or an electronic transmission of the appointment is
12 received by the inspector of election or the officer or agent of the

13 corporation authorized to tabulate votes. A photographic or similar
14 reproduction of an appointment, or a telegram, cablegram, facsimile
15 transmission, wireless or similar transmission of an appointment
16 received by such person shall be sufficient to effect such appointment.
17 An appointment of a proxy is valid for eleven months unless a longer
18 period is expressly provided in the appointment.

19 (d) An appointment of a proxy is revocable unless the appointment
20 form or electronic transmission of the appointment states that it is
21 irrevocable and the appointment is coupled with an interest.
22 Appointments coupled with an interest include the appointment of: (1)
23 A pledgee; (2) a person who purchased or agreed to purchase the
24 shares; (3) a creditor of the corporation who extended it credit under
25 terms requiring the appointment; (4) an employee of the corporation
26 whose employment contract requires the appointment; or (5) a party to
27 a voting agreement created under section 33-716.

28 (e) The death or incapacity of the shareholder appointing a proxy
29 does not affect the right of the corporation to accept the proxy's
30 authority unless notice of the death or incapacity is received by the
31 secretary or other officer or agent authorized to tabulate votes before
32 the proxy exercises his authority under the appointment.

33 (f) An appointment of a proxy made irrevocable under subsection
34 (d) of this section is revoked when the interest with which it is coupled
35 is extinguished.

36 (g) [A] Unless an appointment of a proxy otherwise provides, an
37 appointment made irrevocable under subsection (d) of this section
38 continues in effect after a transfer of the shares and a transferee takes
39 subject to the appointment, except that a transferee for value of shares
40 subject to an irrevocable appointment may revoke the appointment if
41 he did not know of its existence when he acquired the shares and the
42 existence of the irrevocable appointment was not noted conspicuously
43 on the certificate representing the shares or on the information
44 statement for shares without certificates.

45 (h) Subject to section 33-708 and to any express limitation on the
46 proxy's authority stated in the appointment form or electronic
47 transmission of the appointment, a corporation is entitled to accept the
48 proxy's vote or other action as that of the shareholder making the
49 appointment.

50 Sec. 2. Section 33-757 of the general statutes is repealed and the
51 following is substituted in lieu thereof (*Effective October 1, 2014*):

52 (a) A director who votes for or assents to a distribution made in
53 violation of section 33-687 or [33-887a] subsection (a) of section 33-887b
54 or the certificate of incorporation is personally liable to the corporation
55 for the amount of the distribution that exceeds what could have been
56 distributed without violating section 33-687 or [33-887a] subsection (a)
57 of section 33-887b or the certificate of incorporation if it is established
58 that he did not perform his duties in compliance with section 33-756 or
59 [33-887a] subsection (a) of section 33-887b. In any proceeding
60 commenced under this section, a director has all of the defenses
61 ordinarily available to a director.

62 (b) A director held liable under subsection (a) of this section for an
63 unlawful distribution is entitled to contribution: (1) From every other
64 director who could be held liable under subsection (a) of this section
65 for the unlawful distribution; and (2) from each shareholder for the
66 amount the shareholder accepted knowing the distribution was made
67 in violation of section 33-687 or [33-887a] subsection (a) of section 33-
68 887b or the certificate of incorporation.

69 (c) A proceeding under this section to enforce (1) the liability of a
70 director under subsection (a) of this section is barred unless it is
71 commenced within two years after the date (A) on which the effect of
72 the distribution was measured under subsection (e) or (g) of section 33-
73 687, (B) as of which a violation of subsection (a) of section 33-687
74 occurred as a consequence of disregarding a restriction in the
75 certificate of incorporation, or (C) on which the distribution of assets to
76 shareholders was made under section [33-887a] subsection (a) of
77 section 33-887b; or (2) contribution or recoupment under subsection (b)

78 of this section is barred unless it is commenced within one year after
79 the liability of the claimant has been finally adjudicated under
80 subsection (a) of this section.

81 (d) For purposes of this section, a director shall be deemed to have
82 voted for a distribution if such director was present at the meeting of
83 the board of directors or committee thereof at the time such
84 distribution was authorized and did not vote in dissent therefrom, or if
85 such director consented thereto pursuant to section 33-749.

86 Sec. 3. Section 33-776 of the general statutes is repealed and the
87 following is substituted in lieu thereof (*Effective October 1, 2014*):

88 (a) A corporation may indemnify and advance expenses under
89 sections 33-770 to 33-779, inclusive, as amended by this act, to an
90 officer [, employee or agent] of the corporation who is a party to a
91 proceeding because he is an officer [, employee or agent] of the
92 corporation (1) to the same extent as a director, and (2) if he is an
93 officer [, employee or agent] but not a director, to such further extent [,
94 consistent with public policy,] as may be provided by contract, the
95 certificate of incorporation, the bylaws or a resolution of the board of
96 directors except for (A) liability in connection with a proceeding by or
97 in the right of the corporation other than for expenses incurred in
98 connection with the proceeding, or (B) liability arising out of conduct
99 that (i) constitutes a knowing and culpable violation of law by the
100 officer, (ii) enabled the officer to receive an improper personal gain,
101 (iii) showed a lack of good faith and conscious disregard for the duty
102 of the officer to the corporation under circumstances in which the
103 officer was aware that his conduct or omission created an unjustifiable
104 risk of serious injury to the corporation, or (iv) constituted a sustained
105 and unexcused pattern of inattention that amounted to an abdication
106 of the officer's duty to the corporation. A corporation may delegate to
107 its general counsel or other specified officer or officers the ability
108 under this subsection to determine that indemnification or advance for
109 expenses to such officer [, employee or agent] is permissible and the
110 ability to authorize payment of such indemnification or advance for

111 expenses. Nothing in this subdivision shall in any way limit either the
112 ability or the obligation of a corporation to indemnify and advance
113 expenses under other applicable law to any officer [, employee or
114 agent] who is not a director.

115 (b) The provisions of subdivision (2) of subsection (a) of this section
116 shall apply to an officer [, employee or agent] who is also a director if
117 the basis on which he is made a party to the proceeding is an act or
118 omission solely as an officer. [, employee or agent.]

119 (c) An officer [, employee or agent] of a corporation who is not a
120 director is entitled to mandatory indemnification under section 33-772
121 and may apply to a court under section 33-774 for indemnification or
122 advance for expenses, in each case to the same extent to which a
123 director may be entitled to indemnification or advance for expenses
124 under said sections.

125 (d) A corporation which was incorporated under the laws of this
126 state, whether under chapter 599 of the general statutes, revised to
127 January 1, 1995, or any other general law or special act, prior to
128 January 1, 1997, shall, except to the extent that the certificate of
129 incorporation expressly provides otherwise, indemnify under sections
130 33-770 to 33-779, inclusive, as amended by this act, except subdivision
131 (2) of subsection (a) of section 33-771, each officer, employee or agent
132 of the corporation who is not a director to the same extent as the
133 corporation is permitted to provide the same to a director pursuant to
134 subdivision (1) of subsection (a) and subsections (b), (c) and (d) of
135 section 33-771, as limited by section 33-775, and for this purpose the
136 determination required by section 33-775 may in addition be made by
137 the general counsel of the corporation, or such other or additional
138 officer or officers as the board of directors may specify.

139 Sec. 4. Section 33-777 of the general statutes is repealed and the
140 following is substituted in lieu thereof (*Effective October 1, 2014*):

141 A corporation may purchase and maintain insurance on behalf of an
142 individual who is a director [,] or officer [, employee or agent] of the

143 corporation, or who, while a director [.] or officer [, employee or agent]
144 of the corporation, serves at the corporation's request as a director,
145 officer, partner, trustee, employee or agent of another domestic or
146 foreign corporation, partnership, joint venture, trust, employee benefit
147 plan or other entity, against liability asserted against or incurred by
148 him in that capacity or arising from his status as a director [.] or officer
149 [, employee or agent,] whether or not the corporation would have
150 power to indemnify or advance expenses to him against the same
151 liability under sections 33-770 to 33-779, inclusive, as amended by this
152 act.

153 Sec. 5. Section 33-778 of the general statutes is repealed and the
154 following is substituted in lieu thereof (*Effective October 1, 2014*):

155 (a) A corporation may, by a provision in its certificate of
156 incorporation or bylaws or in a resolution adopted or a contract
157 approved by its board of directors or shareholders, obligate itself in
158 advance of the act or omission giving rise to a proceeding to provide
159 indemnification in accordance with section 33-771 or advance funds to
160 pay for or reimburse expenses in accordance with section 33-773. Any
161 such obligatory provision shall be deemed to satisfy the requirements
162 for authorization referred to in subsection (c) of section 33-773 and
163 subsection (c) of section 33-775. Any such provision that obligates the
164 corporation to provide indemnification to the fullest extent permitted
165 by law shall be deemed to obligate the corporation to advance funds to
166 pay for or reimburse expenses in accordance with section 33-773 to the
167 fullest extent permitted by law, unless the provision specifically
168 provides otherwise.

169 (b) A right of indemnification or to advances for expenses created
170 by this subpart or under subsection (a) of this section and in effect at
171 the time of an act or omission shall not be eliminated or impaired with
172 respect to such act or omission by an amendment of the certificate of
173 incorporation or bylaws or a resolution of the directors or
174 shareholders, adopted after the occurrence of such act or omission,
175 unless, in the case of a right created under subsection (a) of this

176 section, the provision creating such right and in effect at the time of
177 such act or omission explicitly authorizes such elimination or
178 impairment after such act or omission has occurred.

179 (c) Any provision pursuant to subsection (a) of this section shall not
180 obligate the corporation to indemnify or advance expenses to a
181 director of a predecessor of the corporation, pertaining to conduct with
182 respect to the predecessor, unless otherwise specifically provided. Any
183 provision for indemnification or advance for expenses in the certificate
184 of incorporation, bylaws or resolution of the board of directors or
185 shareholders of a predecessor of the corporation in a merger or in a
186 contract to which the predecessor is a party, existing at the time the
187 merger takes effect, shall be governed by subdivision (3) of subsection
188 (a) of section 33-820.

189 (d) Subject to subsection (b) of this section, a corporation may, by a
190 provision in its certificate of incorporation, limit any of the rights to
191 indemnification or advance for expenses created by or pursuant to
192 sections 33-770 to 33-779, inclusive, as amended by this act.

193 (e) Sections 33-770 to 33-779, inclusive, as amended by this act, do
194 not limit a corporation's power to pay or reimburse expenses incurred
195 by a director or officer in connection with his appearance as a witness
196 in a proceeding at a time when he is not a party.

197 (f) Sections 33-770 to 33-779, inclusive, as amended by this act, do
198 not limit a corporation's power to indemnify, advance expenses to or
199 provide or maintain insurance on behalf of an employee or agent.

200 Sec. 6. Section 33-715 of the general statutes is repealed and the
201 following is substituted in lieu thereof (*Effective October 1, 2014*):

202 (a) One or more shareholders may create a voting trust, conferring
203 on a trustee the right to vote or otherwise act for them, by signing an
204 agreement setting out the provisions of the trust, which may include
205 anything consistent with its purpose, and transferring their shares to
206 the trustee. When a voting trust agreement is signed, the trustee shall

207 prepare a list of the names and addresses of all voting trust beneficial
208 owners, [of beneficial interests in the trust,] together with the number
209 and class of shares each transferred to the trust, and deliver copies of
210 the list and agreement to the corporation's principal office.

211 (b) A voting trust becomes effective on the date the first shares
212 subject to the trust are registered in the trustee's name. [A voting trust
213 is valid for not more than ten years after its effective date unless
214 extended under subsection (c) of this section.

215 (c) All or some of the parties to a voting trust may extend it for
216 additional terms of not more than ten years each by signing an
217 extension agreement and obtaining the voting trustee's written consent
218 to the extension. An extension is valid for ten years from the date the
219 first shareholder signs the extension agreement. The voting trustee
220 must deliver copies of the extension agreement and list of beneficial
221 owners to the corporation's principal office. An extension agreement
222 binds only those parties signing it.]

223 (c) Limits, if any, on the duration of a voting trust shall be as set
224 forth in the voting trust, except that a voting trust that became effective
225 on or before September 30, 2014, is valid for not more than ten years
226 after its effective date unless such voting trust is: (1) Extended in
227 accordance with the provisions of subsection (d) of this section; or (2)
228 amended to provide otherwise by unanimous agreement of the parties
229 to the voting trust.

230 (d) All or some of the parties to a voting trust in effect on or before
231 September 30, 2014, may extend such voting trust for additional terms
232 of not more than ten years each by signing an extension agreement and
233 obtaining the voting trustee's written consent to the extension. Such
234 extension is valid for ten years from the date the first shareholder signs
235 the extension agreement. The voting trustee must deliver copies of the
236 extension agreement and list of beneficial owners to the corporation's
237 principal office. An extension agreement binds only those parties
238 signing the extension agreement.

239 Sec. 7. Section 33-717 of the general statutes is repealed and the
240 following is substituted in lieu thereof (*Effective October 1, 2014*):

241 (a) An agreement among the shareholders of a corporation that
242 complies with this section is effective among the shareholders and the
243 corporation even though it is inconsistent with one or more other
244 provisions of sections 33-600 to 33-998, inclusive, as amended by this
245 act, in that it:

246 (1) Eliminates the board of directors or restricts the discretion or
247 powers of the board of directors;

248 (2) Governs the authorization or making of distributions whether or
249 not in proportion to ownership of shares, subject to the limitations in
250 section 33-687;

251 (3) Establishes who shall be directors or officers of the corporation,
252 or their terms of office or manner of selection or removal;

253 (4) Governs, in general or in regard to specific matters, the exercise
254 or division of voting power by or between the shareholders and
255 directors or by or among any of them, including use of weighted
256 voting rights or director proxies;

257 (5) Establishes the terms and conditions of any agreement for the
258 transfer or use of property or the provision of services between the
259 corporation and any shareholder, director, officer or employee of the
260 corporation or among any of them;

261 (6) Transfers to one or more shareholders or other persons all or
262 part of the authority to exercise the corporate powers or to manage the
263 business and affairs of the corporation, including the resolution of any
264 issue about which there exists a deadlock among directors or
265 shareholders;

266 (7) Requires dissolution of the corporation at the request of one or
267 more of the shareholders or upon the occurrence of a specified event or
268 contingency; or

269 (8) Otherwise governs the exercise of the corporate powers or the
270 management of the business and affairs of the corporation or the
271 relationship among the shareholders, the directors and the
272 corporation, or among any of them, and is not contrary to public
273 policy.

274 (b) An agreement authorized by this section shall be: (1) Set forth
275 (A) in the certificate of incorporation or bylaws and approved by all
276 persons who are shareholders at the time of the agreement or (B) in a
277 written agreement that is signed by all persons who are shareholders
278 at the time of the agreement and is made known to the corporation;
279 and (2) subject to amendment only by all persons who are
280 shareholders at the time of the amendment, unless the agreement
281 provides otherwise. [; and (3) valid for ten years, unless the agreement
282 provides otherwise.]

283 (c) The existence of any agreement authorized by this section shall
284 be noted conspicuously on the front or back of each certificate for
285 outstanding shares or on the information statement required by
286 subsection (b) of section 33-677. If at the time of the agreement the
287 corporation has shares outstanding represented by certificates, the
288 corporation shall recall the outstanding certificates and issue substitute
289 certificates that comply with this subsection. The failure to note the
290 existence of the agreement on the certificate or information statement
291 shall not affect the validity of the agreement or any action taken
292 pursuant to it. Any purchaser of shares who, at the time of purchase,
293 did not have knowledge of the existence of the agreement shall be
294 entitled to rescission of the purchase. A purchaser shall be deemed to
295 have knowledge of the existence of the agreement if its existence is
296 noted on the certificate or information statement for the shares in
297 compliance with this subsection and, if the shares are not represented
298 by a certificate, the information statement is delivered to the purchaser
299 at or prior to the time of purchase of the shares. An action to enforce
300 the right of rescission authorized by this subsection must be
301 commenced within the earlier of ninety days after discovery of the
302 existence of the agreement or two years after the time of purchase of

303 the shares.

304 (d) An agreement authorized by this section shall cease to be
305 effective when the corporation becomes a public corporation. If the
306 agreement ceases to be effective for any reason, the board of directors
307 may, if the agreement is contained or referred to in the corporation's
308 certificate of incorporation or bylaws, adopt an amendment to the
309 certificate of incorporation or bylaws, without shareholder action, to
310 delete the agreement and any references to it.

311 (e) An agreement authorized by this section that limits the
312 discretion or powers of the board of directors shall relieve the directors
313 of, and impose upon the person or persons in whom such discretion or
314 powers are vested, liability for acts or omissions imposed by law on
315 directors to the extent that the discretion or powers of the directors are
316 limited by the agreement.

317 (f) The existence or performance of an agreement authorized by this
318 section shall not be a ground for imposing personal liability on any
319 shareholder for the acts or debts of the corporation even if the
320 agreement or its performance treats the corporation as if it were a
321 partnership or results in failure to observe the corporate formalities
322 otherwise applicable to the matters governed by the agreement.

323 (g) Incorporators or subscribers for shares may act as shareholders
324 with respect to an agreement authorized by this section if no shares
325 have been issued when the agreement is made.

326 (h) Limits, if any, on the duration of an agreement authorized by
327 this section shall be as set forth in the agreement, except that such an
328 agreement in effect on or before September 30, 2014, is valid for ten
329 years unless the agreement provided otherwise.

330 Sec. 8. Section 33-736 of the general statutes is repealed and the
331 following is substituted in lieu thereof (*Effective October 1, 2014*):

332 (a) The certificate of incorporation or bylaws may prescribe
333 qualifications for (1) directors, or (2) nominees for directors. [A director

334 need not be a resident of this state or a shareholder of the corporation
335 unless the certificate of incorporation or bylaws so prescribe.]
336 Qualifications for directors or nominees for directors shall be lawful
337 and reasonable as applied to the corporation.

338 (b) A requirement that is based on a past, current or prospective
339 action, or expression of an opinion, by a nominee or director that could
340 limit the ability of a nominee or director to discharge his or her duties
341 as a director is not a permissible qualification under this section; except
342 that a qualification may include not being or having been subject to
343 specified criminal, civil or regulatory sanctions or not having been
344 removed as a director by judicial action or for cause.

345 (c) A director need not be a resident of this state or a shareholder of
346 the corporation unless the certificate of incorporation or bylaws so
347 prescribe.

348 (d) A qualification for nomination for director prescribed before a
349 person's nomination shall apply to such person at the time of
350 nomination. A qualification for nomination for director prescribed
351 after a person's nomination shall not apply to such person with respect
352 to such nomination.

353 (e) A qualification for director prescribed before the start of a
354 director's term may apply only at the time an individual becomes a
355 director or may apply during a director's term. A qualification
356 prescribed during a director's term shall not apply to that director
357 before the end of that term.

358 Sec. 9. Subsection (f) of section 34-32c of the general statutes is
359 repealed and the following is substituted in lieu thereof (*Effective*
360 *October 1, 2014*):

361 (f) Upon the filing of the certificate of reinstatement with the
362 Secretary of the State, reinstatement shall be effective, the legal
363 existence of the reinstated limited partnership shall commence and it
364 shall be revested with its rights and powers under this chapter. If

365 reinstatement follows cancellation of the limited partnership by
366 forfeiture, as provided in section 34-32b, then the reinstatement shall
367 relate back to and take effect as of the effective date of the cancellation,
368 and the limited partnership shall resume carrying out its business as if
369 the cancellation had never occurred. No action or proceeding, civil or
370 criminal, to which the limited partnership is a party at the time of
371 reinstatement shall be affected by such reinstatement except as the
372 court shall, under the circumstances, determine. The reinstated limited
373 partnership shall be estopped to deny its legal existence during such
374 time as its rights and powers were forfeited.

375 Sec. 10. Subsection (f) of section 34-216 of the general statutes is
376 repealed and the following is substituted in lieu thereof (*Effective*
377 *October 1, 2014*):

378 (f) Upon the filing of the certificate of reinstatement with the
379 Secretary of the State, reinstatement shall be effective, the legal
380 existence of the reinstated limited liability company shall commence
381 and it shall be revested with its rights and powers under sections 34-
382 100 to 34-242, inclusive. If reinstatement follows dissolution by
383 forfeiture, as provided in section 34-215, then the reinstatement shall
384 relate back to and take effect as of the effective date of the dissolution
385 by forfeiture, and the limited liability company shall resume carrying
386 out its business as if the dissolution by forfeiture had never occurred.
387 No action or proceeding, civil or criminal, to which the limited liability
388 company is a party at the time of reinstatement shall be affected by
389 such reinstatement except as the court shall, under the circumstances,
390 determine. Any claim against the limited liability company barred as
391 provided in section 34-213 and not otherwise barred, shall be relieved
392 of such bar upon reinstatement of the limited liability company and
393 the reinstated limited liability company shall be estopped to deny its
394 legal existence during such time as its rights and powers were
395 forfeited.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>October 1, 2014</i>	33-706
Sec. 2	<i>October 1, 2014</i>	33-757
Sec. 3	<i>October 1, 2014</i>	33-776
Sec. 4	<i>October 1, 2014</i>	33-777
Sec. 5	<i>October 1, 2014</i>	33-778
Sec. 6	<i>October 1, 2014</i>	33-715
Sec. 7	<i>October 1, 2014</i>	33-717
Sec. 8	<i>October 1, 2014</i>	33-736
Sec. 9	<i>October 1, 2014</i>	34-32c(f)
Sec. 10	<i>October 1, 2014</i>	34-216(f)

Statement of Legislative Commissioners:

In section 9(f), "then the cancellation shall relate back" was changed to "then the reinstatement shall relate back" for accuracy.

JUD *Joint Favorable Subst. -LCO*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill, which modifies statutes concerning private business entities, has no fiscal impact.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sSB 411*****AN ACT CONCERNING REVISIONS TO THE CONNECTICUT
BUSINESS CORPORATION ACT.*****SUMMARY:**

This bill makes a number of changes to the business corporation statutes. It:

1. limits when business corporations can indemnify and advance expenses to officers;
2. eliminates statutory provisions indemnifying and advancing expenses to corporate employees and agents but does not limit the corporation's ability to provide these protections otherwise;
3. removes time limits on the validity of voting trusts and shareholder agreements and allows the agreements creating them to set their term, for agreements taking effect after September 30, 2014;
4. requires qualifications for directors or nominees for director to be reasonable and adds specific provisions about qualifications;
5. allows the reinstatement of a limited liability company (LLC) or limited partnership (LP) after its administrative dissolution or cancellation for failure to maintain a statutory agent for service of process to relate back to the effective date of the dissolution;
6. makes minor changes regarding proxies; and
7. makes technical and conforming changes and corrects an improper reference.

EFFECTIVE DATE: October 1, 2014

§ 1 — PROXIES***Electronic Appointments***

By law, a shareholder or his or her agent or attorney can appoint a proxy to vote or act on the shareholder's behalf by an electronic transmission. The bill requires the electronic transmission to contain or be accompanied by information that allows someone to determine the electronic transmission is authorized by the shareholder, agent, or attorney.

Revocability

By law, a proxy is irrevocable if (1) it states it is irrevocable and (2) the appointment is coupled with an interest, which includes appointment of someone who purchases or agrees to purchase the shares, a corporate employee whose employment contract requires appointment, or a party to a voting agreement.

By law, someone who purchases shares subject to an irrevocable appointment can revoke the appointment if he or she did not know of it when acquiring the shares and the appointment was not noted conspicuously on certain documents. The bill specifies that an irrevocable appointment continues after other transfers unless the appointment provides otherwise.

§§ 3-5 — INDEMNIFICATION***Officers***

The bill limits when business corporations can indemnify and advance expenses to officers. Currently, they may provide these protections to officers (1) to the same extent as directors, if the officer is also a director or (2) as provided by contract, the corporation's certificate of incorporation or bylaws, or a board resolution. When an officer is not also a director, the bill prohibits indemnification and advancing expenses based on liability from a legal proceeding by or on behalf of the corporation, other than for expenses incurred connected to the proceeding. It also prohibits it when the officer's conduct:

1. was a knowing and culpable violation of law;

2. enabled the officer to receive an improper personal gain;
3. showed a lack of good faith and conscious disregard for the officer's duty to the corporation under circumstances in which the officer was aware that his or her conduct or omission created an unjustifiable risk of serious injury to the corporation; or
4. was a sustained and unexcused pattern of inattention amounting to an abdication of the officer's duty to the corporation.

The bill also specifies that the indemnification laws do not limit a corporation's power to reimburse expenses that officers incur when appearing as a witness in a proceeding when he or she is not a party. Corporations already have this power for directors.

Employees and Agents

The bill eliminates statutory rules on how corporations indemnify, advance expenses to, and insure employees and agents. These rules currently treat employees and agents the same as officers. The bill also eliminates provisions:

1. entitling an employee or agent to mandatory indemnification for reasonable expenses in an action based on his or her actions as employee or agent, where the employee or agent successfully defended himself or herself and
2. allowing the employee or agent to request indemnification or advances in similar circumstances.

The bill provides that it does not limit a corporation's ability to indemnify, advance expenses, or provide insurance for an employee or agent. Thus, corporations may still provide these protections to employees and agents subject to any common law rules that may apply and contracts the corporations may have with their employees or agents.

§ 6 — VOTING TRUST

By law, shareholders can sign an agreement to create a voting trust

that gives a trustee the right to vote or act on their behalf. Current law limits a voting trust's validity to no more than 10 years but allows the parties to extend it for up to 10 years. The bill establishes new rules for the length of voting trusts' validity.

1. For voting trusts that become effective starting October 1, 2014, the bill allows the trust to set any time limit.
2. For voting trusts effective before October 1, 2014, the bill retains the 10-year limit but allows (a) the parties to unanimously agree to amend the trust to provide a longer limit or (b) all or some of the parties to extend the trust in the same way as currently applies (i.e. by signing an agreement that binds the parties signing it, obtaining the trustee's consent to the extension, and delivering copies of the agreement and a list of beneficial owners to the corporation).

§ 7 — SHAREHOLDER AGREEMENTS

The law allows shareholders to form agreements that are effective between them and the corporation on certain topics, even if they are inconsistent with the statutes governing corporations. These agreements include such things as eliminating the board, restricting the board's powers or discretion, governing distributions, establishing who is a director or officer, governing the exercise or division of voting power between the shareholders and directors, and the exercise of corporate powers or management of the corporation's affairs.

Currently, these agreements are effective for 10 years unless the agreement provides otherwise. For agreements entered into beginning October 1, 2014, the bill allows the agreement to provide any time limit.

§ 8 — QUALIFICATIONS FOR DIRECTORS AND NOMINEES

The bill specifies that the certificate of incorporation or corporate bylaws may set the qualifications for nominees for director, as well as for directors as authorized by existing law.

By law, a director does not need to be a state resident or shareholder unless the certificate or bylaws requires it. The bill adds new qualifications for directors and nominees that:

1. require any qualification set by the certificate or bylaw to be lawful and reasonable;
2. prohibit requirements based on a past, current, or prospective action or expression of an opinion that could limit the person's ability to discharge the duties of a director; and
3. allow a qualification that a person (a) have no past or current criminal, civil, or regulatory sanctions or (b) not have been removed as a director by judicial action or for cause.

The bill provides that a qualification for nomination only applies to a person if it is prescribed before he or she is nominated. Qualifications for directors prescribed before a director's term starts can apply at the time the individual becomes a director or can apply during the term but those prescribed during a director's term do not apply during that term.

§§ 9-10 — REINSTATEMENT OF LLC OR LP

By law, the secretary of the state can dissolve an LLC or cancel an LP by forfeiture if it fails to maintain a statutory agent for service of process. But, the LLC or LP can apply for reinstatement. Under the bill, the LLC's or LP's reinstatement relates back and is effective as of the dissolution's or cancellation's effective date. The entity resumes carrying out business as if the dissolution or cancellation never occurred. Currently, when these entities are reinstated for these or other reasons, reinstatement takes effect when the certificate of reinstatement is filed with the secretary.

BACKGROUND

Related Bill

sHB 5489, favorably reported by the Judiciary Committee, among other things, subjects corporations and other business entities to the

secretary of state's administrative dissolution or similar procedure for failing to file an annual report, eliminates certain entity termination fees, and allows a registered limited liability partnership whose status is revoked by the secretary to file for reinstatement.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

Yea 36 Nay 0 (03/28/2014)